

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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Federal Communications Commission
Office of Secretary

In the Matter of:)

Implementation of the)

Telecommunications Act of 1996:)

CC Docket No. 96-150

Accounting Safeguards Under the)

Telecommunications Act of 1996)

MCI OPPOSITION TO PETITIONS FOR RECONSIDERATION

MCI Telecommunications Corporation (MCI) hereby submits its opposition to petitions for reconsideration of the Commission's Report and Order in the above-captioned proceeding (Order). The Order sets forth the accounting safeguards necessary to satisfy the requirements of Sections 260 and 271 through 276 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Petitions for reconsideration were filed by MCI, SBC, Ameritech, Cox, APPC, and three independent local exchange carriers (LECs), GTE, SNET, and CBT.

GTE, SNET, and CBT seek reconsideration of the Commission's amended rule for valuing service transactions. In the Order, the Commission determined that services provided by the LEC to its affiliates should be valued at the greater of fair market value

or fully distributed cost.¹ By preventing the LECs from recording services transactions with affiliates below market value, the new rule ensures that ratepayers are not harmed when smaller profits are reflected in rates for regulated services. The Commission however, makes an exception to the new services valuation rule, permitting LECs to continue valuing at fully distributed cost those services provided by affiliates whose sole purpose is to provide services to members of the carrier's corporate family.²

GTE, SNET, and CBT argue that the Commission should also exempt services provided by the LECs to their affiliates from the new valuation rule.³ They argue that their corporate structure does not rely on an affiliate whose sole purpose is to provide services to the corporate family, and that they are therefore not in a position to take advantage of the limited exemption to the new services valuation rule. The independents fail to recognize that the Order's limited exemption rests on a finding that centralized provision of services can result in cost savings; under these circumstances, the potential benefits of conducting a fair market value study would be reduced.⁴ The independents are unable to demonstrate that similar considerations apply in the case of services provided by the LEC to its nonregulated affiliates. Indeed, in the case of services provided by the LEC to its affiliates, it is clear that the potential gain of determining whether fully distributed cost undervalues a transaction outweighs the cost of performing

¹Order at ¶147.

²Order at ¶148.

³GTE at 16; CBT at 3-4; SNET at 3-4.

⁴Order at ¶148.

a fair market value study. Application of the new rule will ensure that the services transactions are valued to provide the greatest benefit to ratepayers. Accordingly, the Commission should reject the petitions for reconsideration of new Section 32.27(c) filed by SNET, GTE, and CBT.

The Commission should also reject SBC's petition for reconsideration of several aspects of the new accounting safeguards. First, the Commission should reject SBC's argument that incidental interLATA services may not be treated as nonregulated for accounting purposes. Treating incidental interLATA services as nonregulated for accounting purposes is simply a mechanism for reducing the risk that the costs of these services are inadvertently reflected in local exchange and exchange access service rates. As the Commission notes in the Order, the Part 64 rules would segregate incidental interLATA service costs before they are processed through the Part 36 separations process and Part 69 allocation among access and interexchange service categories.⁵ In this fashion, the Order implements the mandate of Section 271(h) of the Act, which requires that the provision of incidental interLATA services not "adversely affect telephone exchange service ratepayers." Although, as Cox observes, the Part 64 procedure is not the ideal mechanism for preventing cross-subsidy,⁶ the use of Part 64 is preferable to processing incidental interLATA costs through Part 36 and Part 69, as suggested by SBC.

⁵Order at ¶76.

⁶Cox at 5.

SBC has provided no support for its contention that the use of Part 64 is inconsistent with incidental interLATA services' status as regulated Title II services. While the cost allocation procedures specified in Part 64 were not developed to guard against subsidization of competitive common carrier services by monopoly common carrier services, there is nothing that prevents their use for this purpose. Moreover, there is no basis for SBC's assertion that the Commission must refrain from regulating incidental interLATA services if it applies Part 64 cost allocation procedures. The fact that the Part 64 cost allocation procedures were first applied in the context of nonregulated services has no bearing on the regulated status of incidental interLATA services.

SBC also argues that the use of the word "carrier" in amended Section 32.27 represents a rule change, claiming that the old Section 32.27 did not apply to transactions involving a LEC's nonregulated activities. The Commission, however, consistently emphasized that Section 32.27 applied to all transactions between a LEC and its nonregulated affiliates. In the Affiliate Transactions Notice, the Commission stated that it "intended to subject to [the affiliate transactions rules] all transactions between operations that record their costs in regulated accounts and nonregulated affiliates."⁷ More recently, in the Citizens CAM Review Order, the Commission stated that "any transaction between a carrier subject to Part 32 and its nonregulated affiliate is governed

⁷In the Matter of Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, Notice of Proposed Rulemaking, 8 FCC Rcd 8071, ¶107.

by the affiliate transactions rules.”⁸ SBC’s contention that the use of the term “carrier” in amended Section 32.27 represents a rule change is thus without foundation.

Finally, the Commission should reject SBC’s request for reconsideration of the Order’s interpretation of Section 61.45(d)(1)(v) as requiring an exogenous adjustment whenever costs are reallocated from regulated to nonregulated activities. Section 61.45(d)(1)(v) states that exogenous cost changes shall include “[t]he reallocation of investment from regulated to nonregulated activities pursuant to Section 64.901.” SBC argues that the reference to Section 64.901 encompasses only subsection (b)(4), which concerns the use of forecasts to allocate central office and outside plant investment. SBC, however, is unable to supply any reason for ignoring the other subsections of Section 64.901, stating only that “[i]t is highly unlikely that the Commission intended Section 61.45(d)(1)(v) to refer to all of Section 64.901.”⁹ In fact, Section 64.901(b)(4) is not the only subsection whose application can result in reallocation of investment. For example, in the recent Payphone Reconsideration Order, the Commission explicitly rejected USTA’s contention that Section 61.45(d)(1)(v) did not govern the exogenous cost treatment of payphone deregulation.¹⁰ Instead, the Commission found that modifications

⁸In the Matter of Southwestern Bell Telephone Company Application for Review of Memorandum Opinion and Order Concerning the Proper Treatment of Affiliate Transactions, Order On Review, February 5, 1997, at ¶13 (Citizens CAM Review Order).

⁹SBC at 11.

¹⁰In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Order on Reconsideration, CC Docket No. 96-128, released November 8, 1996, at ¶199 (Payphone Reconsideration Order).

to the LECs' cost allocation manuals reflecting the reclassification of payphone set investment required an exogenous cost change pursuant to Section 61.45(d)(1)(v).¹¹

Contrary to SBC's assertion, it is not counter-intuitive for regulated prices to decrease each time a LEC enters another nonregulated product or service market. Instead, the exogenous cost change serves to capture for ratepayers economies of scope resulting from incumbent LEC provision of nonregulated services, in order to ensure that "the benefits of competition are in fact shared with regulated ratepayers."¹² Furthermore, the fact that the investment was placed after the original price cap was set in 1991 is irrelevant.¹³ As AT&T noted in its reply comments, investment since the initialization of price caps would have influenced the revised productivity factors adopted in 1995 and

¹¹Payphone Reconsideration Order at ¶199; In the Matter of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Report and Order, CC Docket No. 96-128, released September 20, 1996, at ¶163.

¹²Order at ¶265.

¹³SBC at 13.

would have had the effect of reducing or eliminating price cap carriers' sharing obligations since the inception of price caps.¹⁴

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION

A handwritten signature in black ink, appearing to read "Alan Buzacott". The signature is stylized with a large, looped "A" and a cursive "Buzacott".

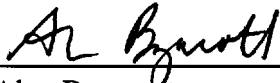
Alan Buzacott
1801 Pennsylvania Ave., NW
Washington, D.C. 20006
(202) 887-3204

April 2, 1997

¹⁴AT&T Reply Comments at 15.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on April 2, 1997.

A handwritten signature in cursive script, appearing to read "Alan Buzacott", is written over a horizontal line.

Alan Buzacott
1801 Pennsylvania Avenue, NW
Washington, D.C. 20006
(202) 887-3204

CERTIFICATE OF SERVICE

I, Barbara Nowlin, do hereby certify that copies of the foregoing "MCI Opposition to Petitions for Reconsideration" were sent via first class mail, postage paid, to the following on this 2nd day of April, 1997.

Ernestine Creech**
Accounting and Audits Division
Common Carrier Bureau
Federal Communications Division
Room 257
2000 L Street, NW
Washington, DC 20554

International Transcription Service**
2100 M Street N.W.
Suite 140
Washington, D.C. 20037

Marlin D. Ard
Lucille M. Mates
Pacific Telesis Group
140 New Montgomery Street,
Rm. 1526
San Francisco, CA 94105

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
11th Floor
1850 M Street NW
Washington, DC 20036

Richard McKenna
HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

James D. Ellis
Robert M. Lynch
David F. Brown
175 E. Houston
Room 1254
San Antonio, TX 78205

Mary McDermott
USTA
1401 H Street, NW
Suite 600
Washington, DC 20005

Alan N. Baker
Ameritech
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Catherine R. Sloan
Worldcom, Inc.
1120 Connecticut Ave., NW
Suite 400
Washington, DC 20036

Sondra J. Tomlinson
U S West, Inc.
Suite 700
1020 19th Street, NW
Washington, DC 20036

Charles D. Gray
James Bradford Ramsay
NARUC
1201 Constitution Avenue
Suite 1102
Post Office Box 684
Washington, DC 20044

Mark C. Rosenblum
Peter H. Jacoby
Judy Sello
AT&T
295 North Maple Avenue
Basking Ridge, NJ 07920

Lawrence W. Katz
Bell Atlantic
1320 North Court House Road
Eighth Floor
Arlington, VA

Campbell L. Ayling
NYNEX
1111 Westchester Avenue
White Plains, NY 10604

Albert H. Kramer
Robert F. Aldrich
Dickstein Shapiro Morin & Oshinsky
2101 L Street NW
Washington, DC 20554-1526

Richard J. Arsenault
Drinker Biddle & Reath
901 Fifteenth Street, NW
Washington, DC 20005

Jody B. Burton
Assistant General Counsel
Personal Property Division
GSA
Washington, DC 20405

David L. Meier
Cincinnati Bell
201 E. Fourth Street
P.O. Box 2301
Cincinnati, OH 45201-2301

Ruth S. Baker-Battist
Voice Tel
5600 Wisconsin Avenue Suite 1007
Chevy Chase, MD 20815

Joseph A. Klein
Michael S. Slomin
Bell Communications Research, Inc.
445 South Street
Morristown, NJ 07960

Peter Arth, Jr.
Edward W. O'Neill
Patrick S. Berdge
Public Utilities Commission of the
State of California
505 Van Ness Ave.
San Francisco, CA 94102

Penny Rubin
State of New York
Department of Public Service
Three Empire State Plaza
Albany, NY 12223-1350

Albert Halprin
Joel Bernstein
Randall Cook
Halprin Temple Goodman and Sugrue
1100 New York Ave., NW
Suite 650E
Washington, DC 20005

Eric Witte
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Charles C. Hunter
Catherine M. Hannan
Hunter & Mow, P.C.
1620 I Street, NW
Suite 701
Washington, DC 20006

Cheryl L. Parrino
610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren, LLP
1200 Nineteenth Street, NW
Suite 500
Washington, DC 20036

David S. J. Brown
Newspaper Association of America
529 14th Street, NW
Suite 440
Washington, DC 20045-1402

Frank Moore
Smith, Bucklin & Associates, Inc.
Government Affairs Division
1200 19th Street, N.W.
Washington, DC 20036

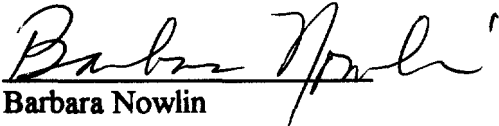
Cynthia B. Miller
Public Service Commission
State of Florida
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Wendy S. Bluemling
Director-Regulatory Affairs
227 Church Street
New Haven, CT 06510

Werner K. Hartenberger
Laura H. Phillips
Christina H. Burrow
Dow, Lohnes & Albertson
1200 New Hampshire Avenue, NW
Suite 800
Washington, DC 20036

Durward D. Dupre
Mary W. Marks
Jonathan W. Royston
SWBT
One Bell Center,
Room 3520
St. Louis, MO 63101

Hand Delivered**


Barbara Nowlin